IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1987 OF 2002

Dr.Kamaleshchandra
Jayantiprasad Shrivastav .. Applicant.
Vs.
Harishchandra Chavan & Ors. .. Respondents.

Mr.S.G.Kudle for the applicant.
Mr.R.Y.Mirza APP for the respondent-State.

CORAM : D.B.BHOSALE, J.

DATED : 12TH AUGUST, 2004

P.C.:

. Heard Mr.Kudle, learned counsel for the applicant and Mr.Mirza, learned A.P.P. for the respondent.

2. This application is directed against the judgment and order dated 16.1.2002 passed by the Sessions Court confirming the judgment and order passed by the Judicial Magistrate, First Class, dated 18.10.2001. The respondents were charged and tried for offences punishable under sections 324, 504, 506 read with 34 of Indian Penal Code. However, by the order dated 18.10.2001 they were convicted for offence punishable only under section 323 read with 34 of Indian Penal Code and instead of sentencing them with imprisonment the learned Magistrate exercised powers under section 3 of the Probation of Offenders Act, 1958 (for short, "the

Act") and released them after admonition. The judgment and order of the learned Magistrate dated 18.10.2001 was confirmed by the Sessions Court in the revision. Mr.Kudle, learned counsel for the applicant submitted that keeping in view the overall facts and circumstances of the case and the status of the applicant the trial court erred in exercising the power under section 3 of the Act instead of awarding a sentence of imprisonment. In the alternative he submitted that the learned Magistrate ought to have exercised powers under section 5 and granted compensation for the injuries sufferred by the applicant in the alleged occurence. I am at a loss to understand as to how the instant application is maintainable against the order passed by the courts below. Moreover, I did not find any error much less manifest illegality in the orders passed by the courts below. Merely because the applicant thinks that the courts below ought to have exercised the powers under section 5 of the Act and granted compensation to the applicant, the powers exercised under section 3 of the Act cannot be held to be illegal. Section 3 of the Act confers sufficient powers to release the accused after admonition if the conditions enumerated in the said provisions stand satisfied. It is not the case of the applicant that the conditions for invoking the provisions of section

3, were not satisfied and still the accused were given benefit. Keeping that in view and considering the overall facts and circumstances of the case and the evidence on record the learned Magistrate cannot be said to have committed an illegality in exercising the powers under section 3 of the Act. No interference by this court is called for. The application is rejected.

(D.B.Bhosale, J.)